HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.25388 OF 2000

Between:

K. Kashanna

… Petitioner

AND

AP Transco, rep., by its Member Secretary
Vidyut Soudha, Somajiguda, Hyderabad,
and two others

… Respondents.

:: O R D E R ::

Counsel for the petitioner : Shri P.R. Balarami Reddy

Counsel for the respondents : Shri Samineni Kishore

February 21, 2007

In this petition, the petitioner has prayed for quashing communication dated 31-10-2000 vide which Superintending Engineer, Operation Circle, Mahabubnagar (respondent No.2) rejected his claim for appointment as Junior Lineman. He has further prayed for issue of a mandamus to the respondents to appoint him as Junior Lineman in accordance with the policy framed by the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board'), which was circulated vide B.P.Ms.No.36, dated 18-5-1997.

The petitioner claims to have worked as NMR in Rural Section, APSEB, Mahabubnagar Division from 1-9-1975 to
31-8-1975 and again from 1-10-1975 to 15-2-1976. After circulation of

the policy framed by the Board vide B.P.Ms.No.36, dated 18-5-1997, he filed Writ Petition No.31974 of 1997 for his regular appointment in the services of the Board. The same was disposed of by the learned Single Judge on 2-12-1997 with a direction to the respondents to consider his case for appointment on a suitable post. In compliance of the Court's direction, the petitioner was interviewed on 4-4-1998, but his candidature was rejected on the ground that he has not worked in the services of the Board as a casual labour.

Along with the affidavit filed by him, the petitioner has annexed Xerox copies of letter dated 31-10-2000, vide which his claim for regular appointment was rejected, certificates issued by Section Officer (Electrical), Operation (Rural), APSEB, Mahabubnagar and Civil Assistant Surgeon, Head Quarters Hospital, Mahabubnagar as also the experience certificate given by M/s.Gujarat Industries and averred that these certificates should be treated as sufficient for treating him eligible for appointment as Lineman.

I have heard learned counsel for the parties and perused the record. In my opinion, the petitioner has failed to make out a case for issue of a mandamus for his appointment as Lineman. In the first place, it is appropriate to mention that out of the three certificates, only one is shown to have been issued by Section Officer (Electrical), Operation (Rural), APSEB, Mahabubnnagar. The remaining two certificates have been issued by Civil Assistant Surgeon, Head Quarters Hospital and M/s.Gujarat Industries. The Civil Assistant Surgeon is not an authority competent to issue certificate regarding the work allegedly done by the petitioner in the employment of the Board and Gujarat Industries is not shown to have engaged the petitioner for execution of a contract awarded by the Board. Therefore, these certificates cannot be made basis for recording a finding that the petitioner is eligible to be appointed as Lineman in terms of B.P.Ms.No.36, dated 18-5-1997.

The petitioner's claim is liable to be rejected on an additional ground that he does not possess the qualifications prescribed by the

Board. The policy decision taken by the Board to consider ex-casual labour, village electricity workers and contract labour for appointment in the regular establishment envisaged consideration of the candidature of only those who possessed the prescribed qualifications. This is evinced from the contents of B.P.Ms.No.36, dated 18-5-1997, which is reproduced below:

ANDHRA PRADESH STATE ELECTRICITY BOARD:
VIDYUT SOUDHA ::: HYDERABAD

Estt. – APSE BOARD – filling up of 50% existing vacancies in initial recruitment cadres by Ex-casual labour who obtained court orders and Village Electricity Workers – ORDERS – Issued.

B.P. (P & G. Per) Ms.No.36, Dated: 18-5-1997

Read the following :-

1. Minutes of Joint Meeting dated 5-3-96 with the three Recognised Unions.
2. B.P. (P & G. Per) Ms.No.228, dt.27-1-97
3. B.P. (P & G. Per) Ms.No.17, dt.22-4-97
4. Gvoernment's D.O. Lr.No.21207/Ser.A.2193 E. Deptt., dated 18-5-1997

PROCEEDINGS:

In the Joint Meeting held on 5-3-96 with the three recognized unions, it was agreed, inter alia, to fill up 50% of the vacancies of the following initial recruitment cadres on receipt of permission from Government, by considering the cases of Ex-casual labour covered by court cases who have to be given second chance, contract labour and Village Electricity Workers.

JLM/JPA/JA/LDC/RC/Typist/Sub-Engineers

2. In the reference second cited, certain guidelines have been issued to consider these cases for appointment against 50% vacancies in the above mentioned categories.

3. The A.P.S.E. Board has re-examined the issue in the light of the orders issued by the Government in the reference last cited and also the developments that took place with reference to the abolition of 33 categories of contract labour in Generating Stations in G.O.Ms.No.41, Labour Department, dt.23-9-96 and decided to consider the cases of

Ex-casual labour covered by court cases who have to be given second chance, Village Electricity Workers and Contract Labour not covered by 33 abolished categories in Generating Stations, against 50% of existing vacancies in the above initial recruitment cadres.

4. The A.P.S.E. Board accordingly issues the following orders in supersession of the orders issued in the references 2 and 3rd cited.

i) Ex-Casual Labour:

The Ex-Casual labour who were already interviewed but failed in the test and given second chance and also obtained interim orders from the High Court for consideration are only eligible for selection for appointment against 50% of the existing vacancies in accordance with the guidelines contained in Memo No.DP/DM-I./A3/1138/95-1, dt.26.9.1985 read with Memo No.D/DM-I/C2/2519/93 dt.14.9.93.

ii) Village Electricity Workers:

In terms of the agreement dated 5.3.96, the cases of the village Electricity Workers shall be considered for selection and appointment against 50% of the existing vacancies subject to the condition that they are not eligible to derive any benefit for their earlier services and on selection they will be appointed as fresh candidates in A.P.S.E. Board.

iii) Contract Labour:

The Contract labour other than those engaged in 33 abolished castegories in generating stations shall be considered for selection and appointment against 50% existing vacancies.

5. The guidelines for selection of the candidates from the above categories shall be as follows:

a) Age: Age shall be reckoned as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of age.

b) Educational Qualifications: Educational Qualifications shall be as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical qualifications with are prescribed in the service regulations for such appointment.

c) Seniority: The Seniority shall be reckoned based on the total period of service rendered by the respective candidates in the Unit as per muster rolls/wage register or as per the records maintained under the contract labour

(Regulation and Abolition) Act, 1970. Separate seniority list shall be prepared for each category as per their eligibility. The continuous period of working shall be taken for purpose of reckoning in seniority in respect of village Electricity workers.

d) Rules of Reservation: The rule of reservation as per roster in terms of Reg.22 of A.P.S.E.B. Service Regulation Part-II shall be strictly followed.

e) Selection Committee:

i. Director personnel.

ii. Concerned Chief Engineer from Generating Station/Zone

iii. Deputy Secretary (Personnel)

iv. Director (Industrial Relations) –Member Convenor.

6. The Selection Committee constituted above shall select the candidates suitable for appointment for each category and communicate the lists to the concerned appointing authorities. They shall appoint the selected candidates depending upon vacancies available duly adopting the rule of reservations in terms of Reg.22 of A.P.S.E. Board Service Regulations Part-II."

The conditions laid down in B.P.Ms.No.36, dated 18-5-1997 were reiterated in B.P. (P & G. Per) Ms.No.271, dated 31-12-1997, which is also reproduced below:

ANDHRA PRADESH STATE ELECTRICITY BOARD

ABSTRACT

Establishment – Andhra Pradesh State Electricity Board – Filling up of 50% of the existing vacancies (as on 18-5-1997) by Ex.Casual Labour/Village Electricity Workers/Contract Labour – Working instructions – Issued.

B.P. (P & G. Per) Ms.No.271, Dated: 31-12-1997

Read the following :-

1) B.P. (P & G. Per) Ms.No.36, Dt. 18-5-97.
2) B.P. (P & G. Per) Ms.No.95, Dt.17-7-97.
3) Bd's Memo No.DIR/DM (IR)/PO-II/A3/131/96, Dt.21-8-97
4) Bd's Memo No.DP/DIR/DM IR)/PO-II/131/96, Dt.28-8-97
5) Bd's Memo No.DP/DIR/DM(IR)/PO-II/131/96, Dt.13-9-97.
6) B.P. (P & G. Per) Ms.No.261, Dt. 19-12-1997.

...

PROCEEDINGS :

An agreement was reached on 5-3-96 between the Andhra Pradesh State Electricity Board and the recognised Unions namely A.P.E.E. Union (Regd.No.1104), A.P.S.E.B. Employees Union (Regd.No.327) and Telugunadu Vidyut Karmika Sangam (Regd. No.B-1245) wherein inter alia it has been agreed to fill up 50% vacancies in initial recruitment cadres by Ex-Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour working in other than (33) abolished categories. Mention of this demand was also made in the agreement dated 18-5-97 with the above Unions.

2) In the B.P. first cited, orders were issued for filling up of 50% existing vacancies in initial recruitment cadres by Ex-Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour engaged in other than (33) abolished categories of Generating Stations.

3) Interviews have been conducted in Zones/Circles/Generating Stations for filling up of the 50% existing vacancies as on 18-5-97 of initial recruitment cadres i.e. Jr.Lineman/Jr.Plant Attendant/ Jr.Assistant/LDC/Typist/Revenue Cashier/Sub-Engineer by the Selection Committee constituted in the B.P. cited and subsequent amendments thereon.

4) In the B.P. 6th cited, orders have been issued that the Andhra Pradesh State Electricity Board has decided to fill up 50% vacancies in initial recruitment cadre existing as on 18-5-97 by the Ex-Casual Labours/Village Electricity Workers/Contract Labours engaged in other than 33 categories found suitable and selected by the Selection Committees constituted by the Board and it has been further mentioned that necessary working instructions to the competent authority will be issued separately.

5) The Andhra Pradesh State Electricity Board after careful consideration, issues the following working instructions for filling up of 50% vacancies existing as on 18-5-97 in the initial recruitment cadre i.e. Jr.Lineman/Junior Plant Attendant/Junior Assistant/ L.D.C./Revenue Cashier/Typist/Sub-Engineer for which interviews have been conducted with the eligible / suitable candidates form among the Ex.Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour not engaged in (33) abolished categories.

i) **Eligibility** :-

a) Ex.Casual Labour: The Ex.Casual Labour who obtained Court Orders on any ground and who satisfy the conditions stipulated in Bd's Memo No.OSD(P)/DM-I/A3/1138/85-1, Dt.26-8-85 in respect of Operation Circles and Bd's Memo No.DP/DM-I/A(b)2/1162/88-1, Dated 4-10-88 in respect of T.L.C. Circles and Bd's Memo No.DP/DM-I/A(b)2/1163/88-1, Dt.5-10-88 in respect of Projects are eligible for consideration.

b) Village Electricity Workers: Those who are working as on 18-5-97 as Village Electricity Workers are only eligible for consideration.

c) Contract Labour: The Contract Labour engaged by a Contractor having a valid license issued by a competent authority under the Contract Labour (Regulation & Abolition) Act, 1970 and Regulations made therein and working as on 18-5-97 are only eligible for consideration. The clarification issued in Bd's Circular Memo No.DP/DIR/DM (IR)/POII/131/96, dt.28-8-97 and Memo No.DP/DIR/DM (IR)/PO-II/131/96, Dt.13-9-97 should also be kept in view.

ii) **Unit of Operation**: The candidates of the above categories have to be considered in the respective circles / Generating Stations against 50% vacancies existing as on 18-5-1997.

iii) **Age**: Age shall be reckoned as per the Service Regulations in force as on the date of first engagement. There shall be no relaxation of the age.

There are specific directions from the Court to consider the cases of over aged/under aged, such directions may be honoured subject to other eligible criteria and after exhausting any remedy by appeal duly indicating a clause in the appointment order.

iv) **Educational Qualifications**: Educational qualifications shall be as per the Service Regulations in force as on the date of first engagement. There shall be no relaxation of Educational Qualifications or other relevant technical qualifications which are prescribed in the Service Regulations. The Clarification issued in Board's Memo No.DP/DIR/DM (IR)/PO.II/131/96, dated 13-09-1997 may be adhered to. If there are specific directions by the Court to consider the cases without insisting on the prescribed qualification, such directions may be honoured subject to other eligible criteria and

after exhausting any remedy by appeal duly indicating a clause in the appointment order.

v) **Seniority**: The seniority shall be reckoned based on the total period of service rendered by the respective candidates in the unit in respect of Ex-Casual Labour and Village Electricity Workers and as per muster rolls/wage registers or as per the records maintained under the Contract Labour (Regulations & Abolition) Act, 1970 in respect of Contract Labour. Separate Seniority list shall be in respect of Contract Labour. Separate seniority list shall be prepared for each category as per their eligibility. The clarification issued in the Board's Memo No.DP/DIR/DM (IR)/PO.II/131/96, dt: 13-09-1997 may be adhered to.

vi) **Rules of Reservation**: The Rule of Reservation as per roster in terms of Regulation 22 of Andhra Pradesh State Electricity Board Service Regulations Part.II shall be strictly followed.

vii) **Order of Preference**: (Subject to Eligibility).

a) Ex-Casual Labour who obtained Court order and interviewed.
b) Village Electricity Workers
c) Contract Labour

6) If any Court directions are received after the interviews are conducted to consider the cases of Ex-Casual Labours, Village Electricity Workers and Contract Labour, interviews may be conducted to such cases once in 3 months commencing from January-1998, for consideration against the existing vacancies/ future vacancies as the case may be.

7) In cases where the writ petitioners are not found eligible for selection, speaking orders may be issued indicating the reasons of their ineligibility. Copy of such orders may invariably be marked to standing legal adviser and to the counsels for petitioners.

8) The Chief Engineers are also informed that they should keep in mind the Court directions if any while issuing appointment orders.

9) The Chief Engineers are further requested to follow all other rules and regulations of the Board relating to appointment which are in vogue.

10) All the required formalities may be completed and further orders from Andhra Pradesh State Electricity Board awaited for releasing

appointment orders.

(BY ORDER AND IN THE NAME OF A.P. STATE ELECTRICITY BOARD)

A.K. KUTTY
MEMBER SECRETARY"

Although the service regulations framed by the Board under Section 79(c) of the Electricity (Supply) Act, 1948 do not specify the qualifications for the post of Lineman, the same will be deemed to have been prescribed vide B.P.Ms.No.1048, dated 23-9-1989 read with Memo No.DP/DM-1/A2/762/94-1, dated 23-10-1994. For the sake of reference, the relevant portions of B.P.Ms.No.1048, dated 23-09-1989 and Memo dated 23-10-1994 are reproduced below:

"**B.P.Ms.No. 1048:**

Proceedings:

As per the existing O.S.S. Non-Statutory Rules the following are the qualifications prescribed for the post of Helper.

i) Ability to read and write.
ii) One year practical experience either in O&M/Construction works.

The above qualifications were prescribed in the year 1958 and continued as such till todate. But the time of prescribing the above qualifications there were no qualified candidates. But, in view of the above circumstances, several persons with academic qualifications and technical qualifications are available now. It is therefore considered desirable to prescribe higher qualifications for direct recruitment of Helpers.

The A.P. State Electricity Board after careful consideration prescribes the following qualifications for the post of Helpers.

i) A pass in SSLC/SSC/10th class;
ii) A pass in ITI preferably with Electrician Trade or
iii) Vocational course in Electrical trade.

These orders will come into effect from the date of issue."

Memo No.DP/DM-1/A2/762/94-1:

The issue regarding re-designation of Helper is under consideration of the Board since long back.

2. After careful consideration the APSE Board directs that posts of

'Helper' in O&M/Construction establishment shall be redesignated as indicated below:

i) 'Junior Lineman' – in Operation circles/TLC/Construction circles etc;

ii) 'Junior Plant Attendent' – in Generating Stations/Projects.

3. However there shall be no change in functions and duties, service conditions etc; and these orders are only mere redesignation of the posts.

4. These orders shall come into force with immediate effect."

The petitioner has neither challenged the vires of B.P.Ms.No.1048, dated 23-9-1989 or Memo dated 23-10-1994 nor he had prayed for quashing the same. Therefore, his eligibility to be appointed as Junior Lineman will have to be determined with reference to the above reproduced qualifications.

The petitioner has not produced any document before the Court to show that he possesses the qualification of SSLC/SSC/X Class pass and ITI or vocational course in Electrician's trade. Therefore, he cannot be treated eligible for appointment as Lineman.

At the cost of repetition, I consider it proper to reiterate that the policy contained in B.P.Ms.No.36, dated 18.05.1997 envisages consideration of the candidature of only those who fulfill the prescribed qualifications, and, as the petitioner does not possess the qualifications prescribed by the Board, the refusal of respondent No.2 to entertain his candidature for appointment as Junior Lineman cannot be termed as illegal.

In **State of M.P. v. Shyama Pardhi**[1], the Supreme Court considered the question whether termination of the service of an employee who does not possess the qualifications prescribed for appointment as Auxiliary Nurse-cum-Midwife can be declared illegal on the ground of violation of the rules of natural justice and answered the same in negative by making the following observations:

"It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification,

namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question or violation of the principles of natural justice does not arise……."

In **Pabitra Mohan Dash v. State of Orissa**[2], the Supreme Court held that the appellant who did not have seven years teaching experience essential for appointment as Head Master does not have any right to continue on the post despite the fact that his appointment was approved by the competent authority. Some of the observations made in that judgment, which have bearing on the case in hand, are extracted below:

"Admittedly, with effect from 29-5-1977 Regulation 17 in the Board of Secondary Education has been brought into force which makes it obligatory for every institution to have a Headmaster who must be a Trained Graduate and must have 7 years of teaching experience as a Trained Graduate Teacher. If subsequent to 29-5-1977 any appointment has been made to the post of Headmaster contrary to the aforesaid provisions of the regulation then the said appointment would be invalid appointment and would not confer any right on the appointee. The expression "approval" used in the second direction in *Golakh Chandra Mohanty case* { (1993) 76 Cut LT 308} is referable to the approval contemplated under Rule 8(2)(*b*) of the Recruitment Rules and, therefore, if there has been an approval by the Director then in such a case the appointment made after the prior approval would not be invalidated. The conclusion of the Special Bench that an approval of the Inspector is no approval in the eye of law is the correct position, and as such, does not require any interference by the Supreme Court. Moreover, a person who has been appointed as Headmaster-*in-charge* cannot claim any right on the basis of that appointment even if the same might have been approved by any competent educational authority. The in-charge Headmaster is not the same as the Headmaster of the school and it merely entitles a

person to remain in charge and discharge the duties of a Headmaster."

In **A.Umarani v. Registrar, Coop.Societies**[3], the Supreme Court held that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal and such illegality cannot be cured by taking recourse to regularisation. The Supreme Court further held that regularisation is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act and the rules framed thereunder.

In **Mohd. Sartaj v. State of U.P.**[4], the Supreme Court held that the appellants who did not possess the requisite training qualification for appointment as Assistant Teacher cannot seek a direction for being allowed to continue in service.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.32388 of 2000 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

February 21, 2007

svs

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[1] (1996) 7 SCC 118

[2] (2001) 2 SCC 480

[3] (2004) 7 SCC 112

[4] (2006) 2 SCC 315